

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

APR 26 2005

Federal Communications Commission
 Office of Secretary

In the Matter of

Amendment of Section 73.202(b),
 Table of Allotments,
 FM Broadcast Stations.
 (Richlands, Shallotte, Topsail Beach, and
 Wrightsville Beach, North Carolina)

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MB Docket No. 05-16
 RM-11143

To: The Office of the Secretary

**MOTION OF SEA-COMM, INC. TO STRIKE
REPLY COMMENTS OF CONNER MEDIA CORPORATION**

Sea-Comm, Inc. ("Sea-Comm"), whose Petition for Rule Making has resulted in the initiation of the captioned proceeding, by its undersigned counsel, hereby respectfully submits this Motion to Strike the Reply Comments of Conner Media Corporation (the "Reply Comments") that were filed in this proceeding on behalf of Conner Media Corporation ("Conner"). Conner's Reply Comments were filed out of time and thus should be dismissed and given no consideration.

Attached to this Motion to Strike, as Appendix A, is a copy of the first page of Conner's Reply Comments as retrieved from the Commission's files in this proceeding by a document clerk employed by Sea-Comm's law firm. As the Commission can readily observe, the document bears a date stamp as "Received – FCC" on April 5, 2005 by the "Federal Communication [*sic*] Commission Bureau/Office."¹ However, the document also bears a date

¹ Someone unknown to Sea-Comm or its undersigned counsel apparently wrote a large "x" in handwriting over the stamp itself.

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stamp as “Received” on April 7, 2005 by the “Federal Communications Commission Office of the Secretary.”²

The *Notice of Proposed Rule Making* in this proceeding, DA 05-76, adopted on January 26, 2005 and released on January 28, 2005, 20 FCC Rcd. _____, 70 Fed. Reg. 7220 (published on February 11, 2005) (the “*NPRM*”) specified on more than one occasion that filings in this proceeding were to have been made with the Office of the Commission’s Secretary. *See NPRM* at Para. 6; *NPRM*, Appendix at Para. 4. Section 1.7 of the Commission’s Rules provides that

[u]nless otherwise provided in this Title, by Public Notice, or by decision of the Commission or of the Commission’s staff acting on delegated authority, pleadings and other documents are considered to be filed with the Commission upon their receipt *at the location designated by the Commission*” (emphasis added).

In this case, the *NPRM* quite specifically required filings in this proceeding to be made with the Office of the Secretary, and specified that the deadline for filing reply comments was April 5, 2005. *NPRM, supra*. Conner’s Counterproposal was filed apparently with an unspecified Bureau or Office of the Commission on April 5, 2005, but was not received in the Office of the Commission’s Secretary – the “location designated by the Commission,” in the parlance of Section 1.7 – until April 7, 2005. As such, Conner’s Reply Comments were “filed,” for purposes of Section 1.7, two days late and cannot be considered. *See* Section 1.415(c) of the Commission’s Rules (“A reasonable time will be provided for filing comments in reply to. . . original comments, and the time provided will be specified in the notice of proposed

² In addition, the Commission’s Electronic Comment Filing System (“ECFS”) lists Conner’s Reply Comments as having been received by the Commission April 7, 2005. *See* Appendix B, a hard copy of the ECFS listing for Conner’s Reply Comments (listed as filed on behalf of “Connect [*sic*] Media Corporation”).

rulemaking”); Section 1.415(d) of the Commission’s Rules (“No additional comments may be filed unless specifically requested or authorized by the Commission”); *NPRM* at Para. 6.³ Conner’s Reply Comments clearly contravene the Commission’s policy against late-filed reply comments. The Commission has demonstrated its commitment to this policy on numerous occasions when it has dismissed late-filed reply comments in broadcast channel allotment proceedings.⁴

Conner filed its Reply Comments at an inappropriate location (and, thus, in an untimely manner), in disregard of the Commission’s recent *Public Notice* reminding interested parties, such as Conner, that filings in FM broadcast station channel allotment rule making proceedings are required to be made with the Office of the Secretary, not with any other Bureau or Office within the Commission, and that “[i]ncorrectly addressed filings will be treated as having been filed on the receipt date shown on the official ‘Office of the Secretary’ date stamp. Failure to follow these requirements may result in the treatment of a filing as untimely,” citing Section 1.7 of the Rules.⁵ This *Public Notice* was released four days prior to the misdirected filing by Conner of its Reply Comments; hence, Conner’s submission of those Reply Comments to a location other than that described in the *Public Notice* cannot be excused. The Commission, in

³ “. . . interested parties may file . . . reply comments on or before April 5, 2005,”

⁴ See, e.g., *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Nampa, Idaho)*, 19 FCC Rcd. 4491, fn. 2 (Chief, Video Division, Media Bureau, 2004); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lexington, Michigan)*, 7 FCC Rcd 2102, fn. 2 (Chief, Policy and Rules Division, Mass Media Bureau, 1992); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Woodbury, Tennessee)*, 4 FCC Rcd 3744, fn. 1 (Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau, 1989).

⁵ See *Public Notice*, “Filing Requirements in FM Allotment Rulemaking Proceedings,” DA 05-995, released April 1, 2005 (copy attached hereto as Appendix C).

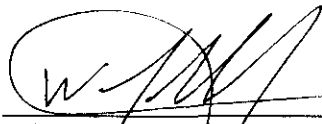
issuing this *Public Notice*, did so not to articulate a new policy against improperly-filed pleadings, but to reiterate its long-standing policy against such defective pleadings.⁶

In view of the foregoing, Conner's Reply Comments must be treated as having been filed with the Commission on April 7, 2005, which renders the Reply Comments untimely and subject to no consideration, under the above-cited authorities.

Respectfully submitted,

SEA-COMM, INC.

By:



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April 26, 2005

⁶

See, e.g., Electri City, Inc. d/b/a KEMS Kewalo, 19 FCC Rcd. 17500, 17501 (Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau) (“... persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location specified in the Commission’s Rules”).

APPENDIX A

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcasting Stations,
(Richlands, Shallotte, Topsail Beach, and
Wrightsville Beach¹, North Carolina)

MB Docket No. 05-16
RM-11143

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APR 07 2005

To: Assistant Chief, Audio Division, Media Bureau

Federal Communications Commission
Office of the Secretary

REPLY COMMENTS OF CONNER MEDIA CORPORATION

Conner Media Corporation ("Conner"), by its attorney, pursuant to Sections 1.415 and 1.420 of the Commission's rules, hereby respectfully submits its initial Reply Comments in the captioned matter.

Conner respectfully notes that it filed Comments and a timely Counterproposal on March 21, 2005. Therein, it demonstrated that all of the relief sought by Sea-Comm, Inc. ("Sea-Comm") in the Commission's *Notice of Proposed Rulemaking* herein, DA 05-76, released January 28, 2005 ("NPRM") could be realized, together with substantial additional public interest benefits that would result from the substitution of Swansboro for Richlands and the consequent upgrade of station WZUP(FM), La Grange, North Carolina from Class C3 to Class C2. Conner assumes that, upon acceptance of its Counterproposal, the Commission will issue a Public Notice setting a date for further reply comments directed to its Counterproposal. In the meantime, Conner offers the following brief observations with respect to the only other set of comments submitted herein – by Sea-Comm on March 10.

¹ We assume that at some future point the communities of La Grange and Swansboro will be added to the caption, pursuant to the Counterproposal which was timely submitted herein.

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APPENDIX B



Federal Communications Commission

1 Record(s) Found For Proceeding:05-16

Proceeding: 05-16	Type Code: RC
Date Received/Adopted: 04/07/05	Date Released/Denied:
Document Type: REPLY COMM	Total Pages: 4
File Number/Community:	DA/FCC Number:
Filed on Behalf of: Connect Media Corporation	
Filed By: Womble Carlyle Sandridge & Rice	
Attorney/Author Name: Peter Gutmann	Document Date:
Complete Mailing Address:	
1401 I Street, NW	
Seventh Floor	
Washington, DC 20005	
View	

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updated 12/11/03

APPENDIX C



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 05-995

Released: April 1, 2005

FILING REQUIREMENTS IN FM ALLOTMENT RULEMAKING PROCEEDINGS

The Audio Division, Media Bureau, issues this reminder regarding filing requirements for rulemaking proceedings to amend the FM Table of Allotments, 47 C.F.R. §73.202(b). In recent months, numerous petitions, counterproposals and comments have been improperly filed in these proceedings. Typically, these filings have been incorrectly addressed to the Media Bureau or the Audio Division, thereby delaying their receipt in the Office of the Secretary and their prompt entry into the Commission's Electronic Comment Filing System ("ECFS").

As stated in each FM allotment Notice of Proposed Rulemaking, all filings in these proceedings are to be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, and addressed for delivery, as appropriate, to the addresses established by the Secretary for hand delivered, commercial overnight mail, and United States Postal Service-delivered filings. *See* Public Notice, *Reminder, Filing Locations for Paper Documents and Instructions for Mailing Electronic Media*, 18 FCC Rcd 16705 (2003); <http://www.fcc.gov/osec>. The first page and cover sheet of each filing must indicate "To: Office of the Secretary." Incorrectly addressed filings will be treated as having been filed on the receipt date shown on the official "Office of the Secretary" date stamp. Failure to follow these requirements may result in the treatment of a filing as untimely. *See* 47 C.F.R. § 1.7.

By: Chief, Audio Division

Contact: William F. Caton, Deputy Secretary, Office of the Secretary, william.caton@fcc.gov,
202-418-0304.


Victoria M. McCauley, Audio Division, Media Bureau, victoria.mccauley@fcc.gov,
202-418-2180.

[FCC]

CERTIFICATE OF SERVICE

I, Shandila Y. Collins, a secretary in the law firm of Paul, Hastings, Janofsky & Walker, LLP, do hereby certify that I have on this twenty-sixth day of April, 2005, caused a copy of the foregoing **MOTION OF SEA-COMM, INC. TO STRIKE REPLY COMMENTS OF CONNER MEDIA CORPORATION** to be sent to the following by first-class United States mail, postage prepaid:

Peter Gutmann
Womble, Carlyle, Sandridge & Rice
1401 Eye Street, N.W.
Seventh Floor
Washington, D.C. 20005
Counsel to Conner Media Corporation


Shandila Y. Collins